IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

NOTICE OF MOTION NO.619 OF 2003

AND

NOTICE OF MOTION NO.827 OF 2004

IN

SUIT NO.632 of 2003

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Acme Civil Engineering co.
Pvt.Ltd. ...Plaintiff

v/s.

Smt.Shantidevi Mulkhraj Matreja
and ors. ...Defendants

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Mr.Sanjay Jain with Ms.Deepa Mani i/b S.K.Srivastava & Co. for the Plaintiff.

Mr.R.R.Nagda for Defendant No.5.

Tamhane & Co. for Defendant No.6.

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CORAM: D.K.DESHMUKH, J.

DATED: 15TH DECEMBER,2004

P.C.:

1. Notice of Motion No.619 of 2003 is permitted to be withdrawn.

2. Notice of Motion No.827 of 2004 is taken out by the Plaintiff for order of attachment before judgment of the property. Admittedly the property is owned by Defendants Nos. 1 to 4. They had entered into development agreement with the Plaintiff. They also entered into development agreement with Defendant No.5. Ultimately, an agreement came to be entered into between the Plaintiff, Defendants Nos. 1 to 4 and the Defendant No.5. By that agreement the Defendants Nos.1 to 5 agreed that the Plaintiff is entitled to Rs.11,25,000/- from Defendants Nos. 1 to 4 and an amount of Rs.29,75,000/- from Defendant No.5. The liability of the Defendants Nos. 1 to 4

was to arise on selling of shops and liability of the Defendant No.5 was to arise on completion of plinth. The Plaintiff has averred that shops have been sold and the plinth has also been constructed. There is no denial of this fact from the Defendants Nos. 1 to 4 and only defence on the part of the Defendant No.5 in this regard is that the plinth of only one wing is completed. In my opinion, even if it is assumed that the plinth of only one wing is completed, the liability of Defendant No.5 will arise. There is no dispute that the Defendant No.5 is constructing the building for selling the flats and shops. Defendants Nos. 1 to 4 have chosen not to appear. They have not filed any affidavit in reply. Therefore, averments in the affidavit filed in support of the motion have to be accepted at their face value so far as Defendants Nos. 1 to 4 are concerned. So far as Defendant No.5 is concerned, in my opinion, he has no defence to offer for his liability, because, the agreement on the basis of which the Plaintiff is making the claim is admittedly signed by the Defendant No.5. The building which is being constructed, is being constructed only because it can be sold by Defendants Nos. 1 to 5.

2. Taking overall view of the matter, therefore, in my opinion, it would be appropriate to grant this Notice of Motion in terms of prayer clause (b) in order to safeguard the interest of the Plaintiff, only against Defendants Nos.1 to 5.

3. Notice of Motion is granted in terms of prayer clause (b). Notice of Motion disposed of.

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